

SUTTONS BAY TOWNSHIP PLANNING COMMISSION

SITE PLAN REVIEW

LEELANAU WATERSPORTS

MAY 17, 2022

STAFF REPORTS

- 5/4/2021 STAFF REPORT IS BEING UP-DATED. 

**SUTTONS BAY TOWNSHIP
PLANNING COMMISSION**

ZONING SITE PLAN REPORT

**LEELANAU WATERSPORTS, LLC
PATRICK OTTO
1274 S. PECK RD., SUTTONS BAY**

**For February 2, 2021 Planning Commission Meeting
Updated for March 16, 2021 Planning Commission Meeting
Updated for May 4, 2021 Planning Commission Meeting**

This report is intended to assist the Planning Commission in their Site Plan Review

I. REQUEST

Request from Leelanau Watersports, LLC, for a change of use in the Commercial Zoning District at 1274 S. Peck Road in Suttons Bay.

The proposed change of use is from a residential dwelling to a commercial watercraft rental business.

The original Site Plan included the following Site Improvements:

- New gravel access road to M-22.
- Improve existing gravel drive on Peck Road.
- Installation of Privacy Fences

The Revised Site Plan includes the following:

- The Access drive to M-22 is designated as future, and is subject to permits and approvals from EGLE and MDOT. Since the final location and plans of this access cannot be determined until EGLE and MDOT have completed their review, this can be added to the Site Plan at a later date.
- 6' high privacy fence set back 6' from the property lines on three sides of the property.
- 6'-8" cedar trees proposed in front of the fence.
- Gravel watercraft parking areas shown.
- Gravel employee parking shown.

II. PROCESS

Per the chart in Section 19.4 of the Suttons Bay Township Zoning Ordinance (ZO), this Change of Use requires a Detailed Site Plan Review by the Planning Commission, since the area is larger than 3000 square feet.

This request is not a Special Land Use, and there is no requirement for a Public Hearing or public notice. The Governing Standards for Special Land Use Permits does not apply.

Per Article 19 of the ZO, review of a Detailed Site Plan is performed by the Planning Commission. This report is intended to assist the Planning Commission in their review.

III. GENERAL FINDINGS OF FACT

1. Subject property is Parcel Number 45-011-032-005-00, 1274 S. Peck Road, Suttons Bay.
2. According to township records, the subject property is owned by Patrick Otto, 1274 S. Peck Rd., Suttons Bay, MI 49682. Patrick Otto submitted the Site Plan for Leelanau Watersports.
3. The subject property is currently zoned Commercial.
4. The Future Land Use Map in the 2012 Suttons Bay Community Joint Master Plan shows this area as being Commercial.
5. The subject property is within the Village Growth Management Area as shown in the 2012 Suttons Bay Community Joint Master Plan.
6. According to the Applicant the subject parcel contains 1.74 acres.
7. Adjacent property zoning and land use:

<u>Direction</u>	<u>Zoning</u>	<u>Land Use</u>
North	Residential	Residential/single family.
East	Commercial & Residential	Vacant
South	Commercial	Commercial
West	Commercial	Vacant
8. According to the Applicant, all watercraft stored on the property is owned by Leelanau Watersports.
9. According to the Applicant, there is no commercial storage of other watercraft on the property.
10. According to the Applicant, there will be approximately 35 watercraft staged at the property during peak business periods.

IV. AGENCY APPROVALS

- Leelanau County Road Commission: The Rd. Commission has issued a permit for use of and improvements to the existing driveway on Peck Road for the new business.
- Michigan Department of Transportation (MDOT): MDOT officials have looked at the potential for a new access drive to M-22. (email included in packet). A formal permit from MDOT is required. (Future Consideration)
- Leelanau County Drain Commissioner/Soil Erosion: A Soil Erosion Permit will be required for the ~~Commercial Driveway construction~~. Gravel drive and parking placement.
- Michigan EGLE: The Applicant has contacted EGLE and has requested a wetlands determination for the proposed driveway to M-22. (Future Consideration)

VI. CONFORMANCE WITH ZONING ORDINANCE REQUIREMENTS

1. ARTICLE 8 – COMMERCIAL DISTRICT

SECTION 8.2 USES PERMITTED BY RIGHT

8.2.E Personal and Business Services.

8.2.F Home Appliance Repair, Equipment Rentals, and Laundries.

Definition of Personal Service: PERSONAL SERVICES: Establishments that render services, rather than (sic) provide goods, primarily to other individuals. (Annotation: Definition added by Twp Board Ordinance. No. 4 of 2007, PC Ordinance Amendment 110 effective 10-26-2007)

On March 16, 2021, the Planning Commission made a finding that the proposed Use is an allowed Use in the Commercial Zoning District

SECTION 8.7 OFF STREET PARKING, AND DELIVERY ACCESS

Refer to Section 3.15.3 Landscaping and Buffering for minimum standards for parking. Access shall be provided for the unloading of goods, supplies, or merchandise from truck to business establishment without obstructing the public right-of-way.

The Site Plan shows that there is adequate room for unloading without obstructing the public right-of-way.

SECTION 8.8 YARD STORAGE

Whenever a business establishment finds it necessary to store part of its goods, supplies, merchandise or returnable containers outside the confines of the building structure, it shall provide an enclosure by solid fence or its equivalent not less than six (6) feet high around such storage area, said fence to be made and maintained in a manner that is consistent with the intent and purpose of this Ordinance and does not adversely affect the adjacent property. In approving or disapproving such fence the Zoning Administrator shall apply the following standards:

- A. The fence will be constructed of such material and of such design as to reasonably prevent trespassers from entering the premises by scaling such fence.
- B. The fence will be solid construction or of material so as to obstruct the view of the premises enclosed.
- C. The fence shall be maintained and/or painted, but shall not be used as a sign or signboard in any way.
- D. Materials stored shall not obtrude above the top of the fence.

The Applicant has proposed a 6' high privacy fence, with 6'-8' cedar trees on the North, East, and South property lines as shown on the Site Plan.

There was considerable discussion regarding this Section at the March 15th PC meeting, particularly D. “Materials stored shall not obtrude above the top of the fence.”

Although it is up to the Planning Commission to make the Site Plan determination, the following comments are offered:

- Are the rental watercraft considered as a “material”?
- If the proposed use was a car rental, or an auto sale lot, would the solid fence be applicable?

- The word “obtrude” means to be “visible in an obtrusive manner”, it does not mean that the “material” shall not be visible at all.

2. ARTICLE 3 – GENERAL PROVISIONS:

I. SECTION 3.6 SCHEDULE OF AREA, HEIGHT, AND PLACEMENT REGULATIONS

Minimum Lot Area and Lot Width:

Subject Parcel is an existing legal conforming lot

Minimum Setbacks: Front: 40’
 Side: 10’
 Rear: 30’

There are no additional structures proposed as part of this Site Plan.

Maximum Lot Area Covered by Structures: 25%

There are no additional structures proposed as part of this Site Plan.

Note 3.6 (b): Front setback areas in the Commercial and Industrial District shall be appropriately landscaped and maintained in accordance with Section 3.12 Landscaping, Screening, Buffers and Greenbelts.
 (Annotation: Subsection changed by Amendment 02-002 effective July 4, 2002)

Greenbelt is necessary on Peck Road and M-22.

II. Section 3.12.2; Landscaping, Screening, Buffers, and Greenbelts

A. This Section shall apply to any site plan reviewed by the Planning Commission.

B. The chart (in this section) explains when a project shall require a buffer between adjacent land uses:

The chart shows that a buffer is required between the Commercial and Residential Use.

The Site Plan shows a privacy fence and the planting of 6’-8’ cedar trees is proposed between the Residential and Commercial Uses.

F. The width of the area in which the landscaping or screening is to occur is determined by the required setbacks of the zoning district.

G. The area in which the landscaping or screening is to occur may include the required setbacks.

H. A visual screen of natural plantings is preferred. The landscaping shall consist of massed evergreen and/or deciduous trees and shrubs so as to continuously restrict a clear view of the uses onto the property responsible for the landscaping. *Section 8.8 requires a fence. Is additional buffering necessary?*

I. The landscaping may only be required along the portions of the property line that have immediate adjacent uses incompatible with the surrounding parcels.

The north property line of this Site borders Residential Zoning and must be landscaped.

J. In required areas where natural landscaping is considered to be impractical or inappropriate, an opaque fence or wall of six (6) feet in height may be substituted in whole or in part provided it meets the approval of the Planning Commission. Where an opaque fence or wall is used it may not be closer than four (4) feet to the property line, and it must be maintained. *Section 8.8 requires a fence.*

The fence must be 4’ off the property line per this section. The proposed fence is shown at 6’ off the property line.

III. Section 3.12.3 Parking Lot Landscaping:

There is no customer parking on-site – Employee parking is shown on the Site Plan.

IV. Section 3.12.4 Right-of-Way Landscaping & Greenbelts:

- A. Greenbelts parallel to road right of ways shall be the same depth as the required setback.
- B. The front setback shall be landscaped with a minimum overall number of one (1) tree for each thirty (30) lineal feet or major portion thereof, of frontage. Plantings may occur in groupings throughout the greenbelt, the number of plantings being equal to one (1) per thirty (30) linear feet. The remainder of the greenbelt shall be landscaped in grass, ground cover, shrubs, and/or other natural, living plant material. The approval of the overall plan is subject to site plan review. The Planning Commission shall look for the plan to achieve at least the same degree of visual and/or sound barrier between the area being landscaped and the adjacent property as to meet the goals of this Section.
- C. Access ways from public rights-of-way through required greenbelts shall be permitted, but such access ways shall not be subtracted from the lineal dimension used to determine the minimum number of trees required.
- D. Nothing in this Section shall be construed as permitting any obstruction to view which could constitute a traffic hazard and/or violate the clear sight distance.

A Right-of-Way Greenbelt must be planted at 1 tree per 30'. Peck Road: With 155' of frontage = 6 trees required. Trees must meet the standards of Section 3.12.8 6-8" Cedar trees are proposed. M-22 frontage is wooded – must be maintained or new Greenbelt planted.

V. Section 3.12.5 Height and Traffic Visibility:

- A. Structures (signs) at site entrances and exits may be up to twelve (12) feet in height, although it is not permitted to allow any obstruction to view which could constitute a traffic hazard.
- B. Fencing and structural screening materials of a height greater than three (3) feet shall not be located within a required front setback adjacent to a road or street.
- C. No fence, wall, sign, screen or planting shall be erected or maintained in such a way as to obstruct vision or interfere with traffic visibility on a curve.
- D. No fence, wall, sign, screen or planting shall be erected or maintained in such a way as to obstruct through vision between the height of three (3) and ten (10) feet at entrances and exits.

There is currently adequate visibility at the driveway on Peck Road. The proposed screening fence will not obstruct visibility at the driveway.

The required right-of-way Greenbelt trees shall be planted to maintain adequate sight distance.

There is no signage shown on the Site Plan.

VI. Section 3.12.6 Particular Uses Requiring Screening:

Mechanical equipment, when located outside and at grade, including air conditioning and heating devices and water and gas meters, but not including plumbing and exhaust vents or chimneys, are to be screened to the height of the particular piece of equipment by landscaping, or by a solid wall or fence, from the view of the street or surrounding properties.

Any mechanical equipment would be screened by the privacy fence shown on the site plan.

VII. Section 3.12.9 : Materials for Structural Screening:

- A. Wooden screens may be erected with wood posts not less than four inch by four inch nominal and solid board cover not less than one (1) inch thick. Masonry piers may be substituted for wood posts. Posts or piers shall be spaced not more than eight (8) feet apart on center. The finished side of the screen shall face abutting properties.
- B. Wrought iron, open mesh or slatted fencing may be used, provided that the ratio of one part open to six parts solid fencing (1:6) is not exceeded. The openings may be a maximum of one (1) inch.
- C. Masonry wall may be used if designed and constructed to facilitate maintenance and not to modify natural drainage in such a way as to endanger adjacent property. Masonry walls must be on cement footings, set a minimum of twenty-four (24) inches below grade.
- D. Other structural screening may be allowed if the Planning Commission finds that such other structural screening will achieve at least the same degree of visual and/or sound barrier effect between the area screened and adjacent property as the screening devices specified in this Section.

Site Plan is proposing a six-foot high wooden fence. The finish side of the fence shall be facing

outwards.

VIII. Section 3.12.10 : Exeptions and Alternative Methods of Compliance:

Under Section 3.12.10, the Planning Commission has the latitude to grant exceptions and/or approve alternative methods for Landscaping, Buffering, Screening & Greenbelts.

IX. Section 3.15 Off Street Parking:

There will be no customers served at this facility. No customer parking is proposed, and there is adequate room for employees parking in the watercraft storage area. It is recommended that a condition be imposed that there be no parking associated with this business allowed along Peck Road or M-22.

VII. PLANNING COMMISSION SITE PLAN REVIEW:

The following Sections of Article 19 – Site Plan Review are copied here to assist the Planning Commission:

Section 19.13 – Standards for Site Plan Review

The Commission, or Zoning Administrator, as applicable, shall approve, or approve with conditions, a site plan if that site plan meets all of the following standards:

- A. All applicable regulations of this Ordinance which apply generally to all districts, found in Article 3 General Provisions of this Ordinance.
- B. All applicable regulations of this Ordinance which apply to the specific zoning district.
- C. All specific standards for the specific proposed special use, if applicable.
- D. Any conditions imposed with the granting of a Special Use Permit or variance.
- E. All utility easements shall be distributed on site in a manner which is least harmful to surrounding properties. Electric, telephone, coaxial cable and other lines shall be located underground.
- F. Water lines, sewer lines, all provisions of surface water drainage shall be approved by the appropriate agency and designed in compliance with any applicable federal and/or state statute, and any Township and/or county ordinance.
- G. Evidence of sufficient protection to ensure there shall be no additional storm water run-off created by the project, or that adequate measures have been taken to accommodate such storm water run-off created on the site.

Section 19.14 – Approval and Compliance

- A. In cases where the Commission reviews the site plan, the Commission shall act to approve, approve with conditions, or disapprove the site plan in writing with findings of fact.
- B. The action shall be recorded in a record of the zoning application and shall be filed with the Zoning Administrator. The Zoning Administrator or Commission shall notify the applicant in writing of its decision along with the Findings of Fact.

Section 19.15 – Establishing Conditions on Site Plan Approval

- A. A site plan may be approved with conditions necessary to comply fully with the intent of this Ordinance.
- B. Reasonable conditions may include conditions necessary to:
 1. Insure (sic) that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.
 2. Protect the natural environment and conserve natural resources and energy.
 3. Insure compatibility with adjacent uses of land.
- C. Conditions imposed shall meet all of the following requirements:
 1. Be designed to protect natural resources, the health, safety, and welfare of those who will use the land or activity under consideration, residents and landowners immediately adjacent to the land or proposed activity, and the community as a whole.
 2. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
 3. Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

Section 19.16 – Security

The Township has the authority to require a Financial Security to ensure that Site Plan improvements are made.

VIII. POSSIBLE CONDITIONS FOR PC CONSIDERATION:

The proposed driveway to M-22 requires approval from MDOT and Soil Erosion and verification from Michigan EGLE regarding possible wetlands.

1. All applicable requirements of any county, state, and federal permits and statutes shall be met, including Leelanau County Soil Erosion, MDOT, and Michigan EGLE.
2. Parking associated with this business is not allowed on Peck Road or M-22.
3. Any new utilities installed shall be installed underground.
4. Any outdoor lighting shall be shielded downward and shall meet the requirements of the zoning ordinance.
5. Any future signage shall be in compliance with the zoning ordinance.
6. Privacy Fence Requirements:
 - A. The fence shall meet the requirements of Section 3.12.9 – Materials for structural screening.
 - B. The fence shall be constructed as shown on the Site Plan.
 - C. The fence shall be constructed of such material and of such design as to reasonably prevent trespassers from entering the premises by scaling such fence.
 - D. The fence shall be solid construction or of material so as to obstruct the view of the premises enclosed.
 - E. The fence shall be maintained and/or painted, but shall not be used as a sign or signboard in any way.
 - F. The finished side of the fence shall be facing outwards.
9. Landscaping shall be installed as shown on the Site Plan.
10. The existing wooded greenbelt along M-22 shall be maintained – or a new greenbelt meeting the zoning ordinance must be planted.
11. The privacy fence and Greenbelt must be installed prior to _____, 2021.
12. The access driveway to M-22 is not part of this approval.

Motion to (approve with conditions/deny) the Site Plan for Leelanau Watersports dated _____.

If denied, the reasons must be presented in writing.

- You can't really block that, it's tall if it's 15 feet.
- Dennis Rathnaw - I would like to concentrate on the use by right. I'm not sure if the fencing is involved in that.
 - Tom Nixon - An attorney for our township gives us advice to help us. That has to carry some weight. Their purpose in citing an opinion for us is to help us keep out of trouble. It doesn't mean that their opinion resolves all matters, but it's their thinking rather than our feeling that allows them to say, this is what we think is best for you. Secondly, I would remind the commissioners that Steve occupies a position of authority on this Planning Commission as well as an independent zoning administrator. As a respective township board member, I have no authority over what Steve can opine. I can't tell him what he should say and what he shouldn't say any more than the body of the township board can say to Steve, no, you must think this way Steve rather than that way. He is an independent contractor who is by law under the Zoning Act permitted the right to offer opinions and to seek redress for issues as he feels appropriate. The value of a township attorney is to be weighed in respect to their opinion to assist us, and to assist us from not getting into trouble. The value of a zoning administrator is an independent judgment as well, and I think that we have received both of those opinions which strengthens my point of view is that I think practically speaking that this meets the ordinance requirement for this being a service use.

Motion that the water craft rental business is a use by right in the commercial district
Don Gregory/moved, Tom Nixon/supported, that the water craft rental business is a use by right in the commercial district. Roll call vote: Yes: Dee McClure, Tom Nixon, Don Gregory, Rhoda Johnson, Andy Brandt, Dennis Rathnaw. No: Susan Odom. Absent: Amy Coleman. Motion passed.

Planning Commission requests that Patrick Otto submit a revised site plan with the following information:

Leelanau Watersports Revised Site Plan

- Show off-street parking and delivery access - SHOWN
- Show employee parking places - SHOWN
- Show how boat parking will be configured - SHOWN
- Show gravel field if part of this phase - SHOWN
- Show paved apron entrance - MDOT Standard - NOT PART OF SITE PLAN
- Show evidence of 35 boat parking spaces - SHOWN
- Show where internal circulation is - SHOWN
- Show driveway location, indicate if tentative - PECK RD DRIVEWAY SHOWN
- Submit letter from EGLE that the requirements for the location of the driveway have been met - N/A
- Identify where tall boats will be stored (less intrusive to the neighbors)
- Show drawing of the fence - submitted.
- Show buffering-combine fence and landscaping-between different land uses (greenbelt on M-22) - SHOWN
- Need schedule of plantings for specific areas (type and size) - CEDARS, SHOWN

MINUTES FROM PREVIOUS MEETING

REVISED PLAN

SP FOR 6/2/22 PC MTG

SUPPLEMENT TO SITE PLAN

LEELANAU WATERSPORTS SITE PLAN REVIEW

FEBRUARY 2, 2021

Applicants answers to questions from the Zoning Administrator:

1. Q. *Provide more description of the business.*

A. Leelanau Watersports provides a service of renting watercraft to customers in Leelanau County. Employees deliver watercraft to customers at area boat launches, then pick up the watercraft when the customer is done.

Q. *Do customers go to this location?*

A. No – Customers do not go to the Peck Road location and the facility is not open to the public.

Q. *Are the watercraft owned by Leelanau Watersports? Is this a commercial boat storage facility?*

A. All of the rental vessels are owned by Leelanau Watersports Corporation and are used as rentals. There is no commercial storage of boats owned by other individuals.

Q. *What is the existing building (former residence) used for?*

A. The existing building onsite is in poor condition and is currently being used as storage, such as extra life jackets, ropes, props, and water tubes and such.

Q. *Are watercraft being serviced on-site?*

A. Currently, servicing includes, but is not limited to, wiping them down on the inside, cleaning the glass, swapping or charging a low battery, or checking the air in the trailer tires. Occasionally a light repair may need to be done there, but anything major is sent to either our Lake Leelanau service center or main shop location down in Manton, Michigan. Only Leelanau Watersports vessels are at this facility. No servicing or repairs of outside watercraft.

Q. *Are watercraft being washed on-site?*

A. If a boat should have an excessive amount of sand or food on a boat floor, it will occasionally be power washed, then vacuumed up with a wet/dry vacuum. The exterior of our boats are washed and waxed once per season at our main service center in Manton, Michigan.

Q. *Has Michigan EGLE (the Michigan Department of Environment, Great Lakes, and Energy) been on-site? Is there a creek on the property?*

A. I (Patrick Otto) have had several phone conversations with Michigan EGLE in reference to any creek or wetlands on this property. I am currently in communication with this zones representative on having an evaluation done this spring in reference to any new building setbacks and putting in a future driveway out to M22. We have received the request paperwork to proceed this spring. I will forward that email.

Q. Has the Michigan Department of Transportation been contacted regarding the proposed driveway?
A. I (Patrick Otto) have had several phone calls with MDOT in reference to putting in a driveway access on M22. The supervisor from MDOT met me onsite and advised where he felt that a driveway off M22 should be installed and what we would need to make it safely accessible and up to State code. I will forward that email.

Q. Has the Leelanau County Road Commission been contacted regarding use of the existing driveway?
A. We have received a permit from the Leelanau County Road Commission to use the existing driveway for this business.

Note: The township has received this permit.

Q. Has the Leelanau County Soil Erosion Office been contacted regarding the proposed improvements?
A. We (Leelanau Watersports) have no correspondence with Leelanau County Soil Erosion office since we are not on any hillsides or dealing with any erosion of any type. Should they like to speak with us, we are certainly available.

Note: A Soil Erosion Permit will be required for the driveway, since it is a commercial project.

Q. The Site Plan needs to show the location of the existing drain field and well.
A.

Note: The Applicant came in and marked the location of the existing drain field and well on the Site Plan.

Q. What is the size of the subject parcel?
A. This parcel is 1.74 acres.

Q. How many trips per day will be entering and leaving this site?
A. On average, we rent out about 6 rentals per day throughout our 3 month season of June, July, and August. If those same boats return that day, that would be a total average of 12.

Q. How many trips per day will be entering and leaving this site?
A. On average, we rent out about 6 rentals per day throughout our 3 month season of June, July, and August. If those same boats return that day, that would be a total average of 12.

Q. Is a permit required for the fuel storage tank?
A. Due to the small size of ours, there are no required permits for our single gas tank that's onsite. We did however, voluntarily register it with the State of Michigan. It was installed by a professional, local, fuel delivery company and it has been INSPECTED & APPROVED by the Fire Marshall for the State of Michigan.

Q. Are there any other hazardous materials stored on-site?
A. There are no other hazardous materials stored on-site at this location other than a few quarts of motor oil.

Q. Are permits needed for washing the boats on-site?
A. Since we are not a commercial washing company, there are no known state permits for the occasional power washing of boats.

From: James Reardon <JReardon@bldhd.org>
Sent: Monday, May 2, 2022 12:23 PM
To: zoningadmin@suttonsbaytwp.com
Subject: Leelanau Watersports

Hi Steve,

I was informed about the lawsuit between Leelanau Watersports and the Twp. Just so you are aware, because there is a change of use from residential to commercial there, that if it is approved, then we have to do a commercial review for remodel there in evaluating it if the septic system is suitable for the commercial use, which is questionable, and it also has to meet public water supply requirements, which is also questionable.

Jim

~~~~~  
Jim Reardon, M.Sc.  
Environmental Sanitarian  
Benzie-Leelanau District Health Department  
231-256-0214  
jreardon@bldhd.org

SUTTONS BAY TOWNSHIP PLANNING COMMISSION

SITE PLAN REVIEW

LEELANAU WATERSPORTS

MAY 17, 2022

ATTORNEY MEMO'S

THIS MEMORANDUM IS MADE UNDER THE ATTORNEY-CLIENT PRIVILEGE  
AND IS EXEMPT FROM DISCLOSURE UNDER THE MICHIGAN  
FREEDOM OF INFORMATION ACT

MEMORANDUM

RELEASED BY  
THE P.C.  
ON 3/16/2021

**TO:** Steve Patmore, Suttons Bay Township Zoning Administrator

**FROM:** Timothy J. Figura, Esq.

**DATE:** March 12, 2021

**RE:** Leelanau Watersports Site Plan Review

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You have asked for our opinion on the following question(s): what is legally allowed in the commercial district, and does the proposed use fall within the approved uses in the commercial district?

**I. Uses Allowed in the Suttons Bay Commercial District**

The Suttons Bay Zoning Ordinance (ZO) at Article 8 establishes the uses permitted for properties in the Commercial District. The Commercial District allows a number of uses “by right”, including many which overlap with those uses allowed in the residential district such as dwellings and churches. The Commercial District also allows, by right, certain uses that are more “commercial” in nature:

- Retail Stores - 8.2(C)
- Business and Professional Offices – 8.2(D)
- Personal and Business Services – 8.2(E)
- Home Appliance Repair, Equipment Rentals, and Laundries – 8.2(F)
- Buildings or uses customarily accessory and clearly identical to the principal uses above – 8.2(G)

Uses allowed by right are given the least rigorous approval process and must only pass review and approval of the site plan. The Commercial District at Section 8.3 allows certain other conditional uses which are not applicable to this property or the proposed use.

In general, uses are only allowed where they are expressly permitted by right or as a special or conditional use. If a use allowed in district A is *not* listed in district B, that use is disallowed in district B. I have reviewed the uses allowed in other districts in order to determine whether the applicant's proposed use is more particularly described or allowed in a different district.

The Agricultural District allows "Commercial Storage of Boats and Vehicles"; at first glance, this appears to cover the use proposed by the applicant. Further review, however, reveals important differences, and would allow an altogether different type of business. The ZO at Section 2.2 defines "Commercial Storage" as "[a] space, or a place, for the safekeeping of personal property for profit." In this circumstance, the watercraft that are rented are presumably property of the business rather than personal property. And while the property owner presumably intends to keep the watercraft safe, "safekeeping" is not the reason that the watercraft are kept on the property. Instead, the watercraft are kept on the property as a staging area for rental. This category best describes watercraft storage businesses which store and protect personal watercraft during the winter months. For these reasons, I do not believe that the proposed use fits under this category.

While the proposed use might fit in the Industrial District, I did not find any particular listed use in that district which would lead me to believe that this use should be restricted to the industrial district. If the industrial district included a use called "watercraft rental", we could assume that the applicants proposed use was intended to be limited to the industrial district. There is no such provision, and I do not find anything else in the Industrial district to suggest that the proposed use should be exclusive to it.

Of the above-listed uses, I will focus on those that best describe the applicant's proposed use: Personal and Business Service, and Equipment Rentals.

## **II. Personal and Business Service**

The ZO at Section 2.2 defines "Personal Service" as "Establishments that render services, rather than provide goods, primarily to other individuals." The same section defines "Business Service" as "Establishments that render services, rather than provide goods, primarily to other businesses." The ZO does not define "goods" or "services". In this context, the most applicable Webster definition of "services" would be "useful labor that does not produce a tangible commodity – usually used in plural." Webster's Dictionary defines "Goods" as "something manufactured or produced for sale". "Goods" are also given a very technical definition in the Michigan Uniform Commercial Code<sup>1</sup>.

The distinction between goods and services is deceptively tricky and is perhaps best thought of as a continuum<sup>2</sup>. For example, dining at a restaurant is not a pure purchase of "goods", nor is it a pure purchase of "services", but instead includes a purchase of goods (food and beverages) as well as services (the serving and preparation of food and beverages). In a rental business, the product being sold is limited access to a particular thing or place. It appears to me that a rental business is closer to the provision of "services" than "goods", since the item in

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<sup>1</sup> "'Goods' means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (article 8) and things in action. 'Goods' also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty..." Michigan Uniform Commercial Code, MCL 440.2105.

<sup>2</sup>

[https://en.wikipedia.org/wiki/Goods\\_and\\_services#:~:text=Goods%20are%20items%20that%20are,videogame%20or%20a%20digital%20movie](https://en.wikipedia.org/wiki/Goods_and_services#:~:text=Goods%20are%20items%20that%20are,videogame%20or%20a%20digital%20movie).

question (the watercraft) is not ultimately sold to the customer. Therefore, it appears that the proposed use would fit under “personal services”.

### III. **Equipment Rentals**

The ZO does not contain a definition of “equipment” or “rental”. The ZO does contain a passing mention to equipment in the definition of “Junk” in Section 2.2, which can include “...vehicles, boats, trailers, and other *transportation equipment*...” (emphasis added). Webster’s Dictionary defines this term as:

***1a:** the set of articles or physical resources serving to equip a person or thing: such as*

*(1): the implements used in an operation or activity*

*(2): all the fixed assets other than land and buildings of a business enterprise*

*(3): the rolling stock of a railway*

***b:** a piece of such equipment*

The ZO does not individually define rental, nor do I believe that this definition will cause any confusion. Still, Webster’s Dictionary contains the following definition for “rent”: “a usually fixed periodical return made by a tenant or occupant of property to the owner for the possession and use thereof.”

The ZO defines “watercraft” as “canoes, jet skis, boats, sailboards, rafts, seaplanes, and all other waterborne vessels”.

It is my opinion that the proposed use fits squarely in the category of “equipment rentals”. The first thing that comes to mind thinking of “equipment rental” would be a business that rents tools or construction equipment. That being said, the lack of a definition of “equipment” in the ZO prevents us from mandating such a narrow interpretation. Under the Webster’s definition above, Watercraft are implements used in the activity of boating, and therefore meet the definition of

“equipment”. There should be no question that the proposed use is a “rental”, since customers pay for the temporary use and possession of the watercraft.

#### **IV. Summary**

It is my opinion that the proposed use of a watercraft rental business is allowed by right in the Commercial District, both under “Personal Services” as well as “equipment rentals”, and that no other zoning district appears to more specifically describe the use proposed by the applicant. The proposed use is subject to site plan review to ensure that it meets all other requirements of the zoning ordinance.



THE LAW OFFICES OF  
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FAX (734) 287-1277

February 26, 2021

Suttons Bay Township  
Attn: Planning Commission  
PO BOX 457  
95 W. Fourth St.  
Suttons Bay, MI 489682

RE: 1274 S. Peck Rd., Suttons Bay Township (the "Property")

Dear Planning Commission:

Our office has been retained by the owner of the above referenced Property to provide an analysis and evaluation of the claim that the proposed use of the Property fails to meet current Zoning requirement of Suttons Bay Township (the "Township"). For the reasons set forth below, the owners proposed use of the Property is in perfect conformity with the Township zoning code (the "Code") and cannot be denied.

There is no question that the Property is in the Commercial Zoning District (the "District"). The District has been zoned commercial since at least 1994 according to the Township's last publicly available zoning map. The Property is therefore subject only to those express restrictions set forth in the Code.

The intent of the District is clearly set forth in Section 8.1 as accommodating "those retail and business activities that serve the whole community." The Code, Article 8, sets forth the permitted uses in the District. Those uses permitted by right include: retail stores, business offices, business services, equipment rentals, and all other uses that are accessory and incidental to these uses. See Section 8.2. The Code requires no buffer zone between the District and adjoining residential districts. See Section 8.5.

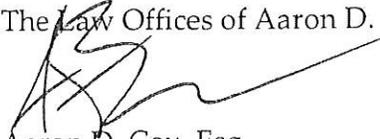
"WE TREAT EVERY CLIENT AS THOUGH THEY WERE OUR ONLY CLIENT."

The Code likewise contemplates the exact use of the Property proposed by my client: storage of goods, supplies, or merchandise outside. The only restriction placed on such use by the Code is the erection of a 6' tall fence surrounding such storage. See Section 8.8. As plainly demonstrated on the submitted site plan, my client has already proposed such a fence for compliance with this requirement.

Further, it is questionable that this issue has even been submitted to the Planning Commission for review. Section 19.2 of the Code limits the applicability of site-plan review to circumstances that do not exist here. There is no land-use permit required, no PUD, no residential development, no appeal, and no variance at issue here. My client merely seeks to use the commercially zoned Property in conformity with the permitted use. There likewise is no change in use as defined by the Code. Use under the Code is defined as: "The purpose for which land or a structure is designed, arranged, or intended, or for which it is or may be occupied or maintained." The purpose of the land and its occupancy is expressly for those commercial activities identified in Section 8 of the Code – the exact activities my client intends – and this use has been in place since at least 1984. The township's purported claim to even have authority over this issue under the guise of a site-plan review is questionable at best.

The Property and proposed use fall within the exact specifications set forth in the Township's own Code. Any attempted denial of my client's lawful rights to use the Property in conformity with the Township's laws would be impermissible and a violation of my client's constitutional property rights. I implore the Township to abide by its duty to uphold its own laws and approve my client's Property and Use as submitted.

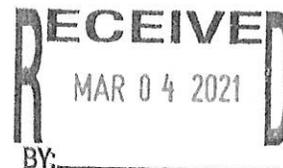
Sincerely,  
The Law Offices of Aaron D. Cox, PLLC



Aaron D. Cox, Esq.

February 26, 2021

Steve Patmore  
Zoning Administrator  
Suttons Bay Township  
PO Box 457  
95 W. Fourth Street  
Suttons Bay, Michigan 49682



Re: Zoning Uses Permitted at 1274 S. Peck Road, Suttons Bay, Michigan 49682

Mr. Patmore:

Our office has been retained by Patrick Otto and Leelanau Watersports, LLC in connection with the real property and improvements located at 1274 S. Peck Road, Suttons Bay, Michigan 49682 ("the Parcel"). It is my understanding that, in connection with a site plan review of the proposed changes to the drive on the Parcel, a question has arisen about whether my client's uses of the Parcel are permitted uses on the Parcel. It is my understanding that the Parcel is currently zoned Commercial. My client is using the Parcel for rental of equipment and some repairs. My client also uses the Parcel for placement of its rental equipment (which includes the boats that my client owns) on a portion of the Parcel.

Based upon my review of the Zoning Ordinance for Suttons Bay Township, it appears that my client's use of the Parcel falls squarely within the uses permitted **by right** within the Commercial District. In particular, the Commercial District is intended for retail and business activities which serve the whole community and specifically include retail stores, equipment rental and repairs. The uses permitted by right also include uses "customarily accessory and clearly incidental" to the principal uses permitted within the district.

Obviously, the rental of equipment and repairs are specifically permitted in the Commercial District which is what my client is doing. Similarly, the storage of my client's equipment (boats) is permitted within the Commercial District. Not only is storage of equipment a customary and incidental use for retail stores and equipment rental business, but also Section 8.8 of the Ordinance specifically permits a business establishment within the Commercial District to store part of its "goods, supplies, merchandise or returnable containers outside the confines of the building structure" as long as a solid fence is installed around the storage area.

As you are aware, my client has or will be installing a fence (in accordance with the requirement of the Ordinance) around the Parcel (or that portion used for storage) and thus, my

Steve Patmore  
February 26, 2021  
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client's placement of boats that it owns for rental purposes is covered by the Ordinance and permitted with the Commercial District. It should be noted that my client is storing boats that it owns (versus storing boats for others) and therefore does not fall within the definition of Commercial Storage, which, as defined in the Zoning Ordinance, involves storage of boats that are owned by others and are stored on the property for profit. The boats being placed on the Parcel by my client are part of my client's goods, supplies and merchandise and, as long as the area of storage is fenced, this is a permissible use. Just as other businesses near the Parcel (such as the lumberyard, the masonry/stone business, and the equipment rental business) also store goods, supplies and merchandise outside of their buildings. Suggesting that my client, who is doing the exact same thing, is not permitted to do so would amount to disparate treatment of my client and would be a violation of the Zoning Ordinance.

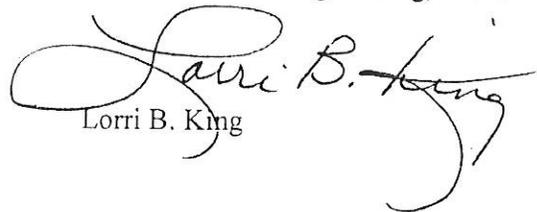
Finally, it is worth noting that my client's use of the Parcel (i) does not increase or significantly change traffic in the area or on the Parcel, rather, with the new drive providing direct access to M-22, my client's use will actually decrease traffic along Peck Road; (ii) is harmonious with the existing uses within the District; and (iii) would provide an improvement to the area.

In summary, it is my client's and my position that the uses to which my client is currently putting the Parcel fall squarely within the uses allowed by right within the Commercial District.

Please feel free to contact me if you have any questions regarding the foregoing.

Sincerely,

Law Offices of King & King, PLLC



Lorri B. King

LBK/bdm  
cc: Client